

(1)S.B.CIVIL WRIT PETITION NO.1184/2005
(Dr.BBL Thakore & Ors. v. State of Rajasthan & Ors.)

(2)S.B.CIVIL WRIT PETITION NO.5171/2004
(Dr.S.C.Bhardwaj & Ors. v. State of Rajasthan & Ors.)

Date of Order :: 23rd November, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.S.Singhvi, for the petitioners.
Mr. R.P.S.Choudhary, Additional Advocate General.
Mr. G.R.Punia]for the respondents.
Mr. Girish Joshi]

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Both these writ petitions involve common question for adjudication, therefore, they are being decided by this common judgment.

The short question for adjudication before the Court in present matters is for entitlement of the petitioners to receive advance increments on acquiring degree of Ph.D. as per the Government of Rajasthan's order dated 11.6.2001 read with Ministry of Human Resource Development, Government of India's communication dated 27.7.1998.

In brief, facts of the case are that all the petitioners are either existing teachers or retired teachers with the respondent university and they

acquired degree of Ph.D. prior to 1.1.1996 while in service of the university. The Government of Rajasthan on accepting the recommendations made by Government of India and University Grants Commission under a communication dated 11.6.2001 conveyed sanction of the Governor to allow two advance increments to a teacher on acquiring the degree of Ph.D. during their service tenure. Accordingly, two increments were given to the petitioners by the university as they acquired the degree of Ph.D. in their service term. The Government of Rajasthan extended the same benefit to the teachers employed by it in higher and technical education by making necessary introduction in relevant Pay Rules, however, the same was withdrawn w.e.f. 6.5.2002 by making an amendment in the pay rules. The Government of Rajasthan by a communication dated 15.5.2002 also made a request to the Vice Chancellor of the respondent university to withdraw the advance increments granted to the teachers on acquiring the degree of Ph.D. By a communication dated 9.5.2002 a specific decision was communicated that the teachers on acquiring the degree of Ph.D. shall not be entitled for advance increments, in pursuant to that the Comptroller of the respondent University by a communication dated 2.12.2003 also clarified that two advance increments shall not be admissible to the teachers who were recruited/promoted to the post for which Ph.D. was an essential qualification. The clarification aforesaid was also in compliance to a

clarification issued by the University Grants Commission under a communication dated 24.7.2002. The university on withdrawal of advance increments granted in pursuant to the Government of Rajasthan's order dated 11.6.2001 proceeded to effect recovery from the petitioners for the amount that is said to be paid in excess. Being aggrieved by the same, these petitions for writ are preferred.

Before proceeding further it is pertinent to note that the University Grants Commission and Indian Council of Agriculture Resource by their subsequent decision made it clear that the teachers who acquired Ph.D. degree during service prior to 1.1.1996 and who were not given the benefit of any advance increments shall be given two advance increments irrespective of the fact that whether there was any requirement of having Ph.D. degree for appointment by way of direct recruitment or promotion on the post concerned. A specific order in this regard was passed by the Ministry of Agriculture, Department of Agriculture Research & Education, New Delhi on 14.11.2005. In view of clarification dated 14.11.2005 (Anx.18) the issue with regard to grant of advance increments on acquiring the degree of Ph.D. solely rests upon the decision of Government of Rajasthan communicated under the communications dated 15.5.2002 and 9.5.2002 (Anx.5 and Anx.7 respectively).

It is contended by counsel for the petitioners that the Government of Rajasthan under a communication dated 11.6.2001 conveyed sanction of the Governor for grant of two advance increments to the teachers as and when they acquire a degree of Ph.D. during the term of their service. The two advance increments were accordingly given to the petitioners by the university and the Government of Rajasthan decided to withdraw the grant of advance increments w.e.f. 9.5.2002 without getting approval in this regard by the Governor, therefore, the decision of Government of Rajasthan is illegal. It is also stated that the petitioners received two advance increments prior to 9.5.2002, the date with effect from a decision was taken not to allow the advance increments to the teachers on acquiring Ph.D. degree. The decision aforesaid is prospective in nature, therefore, that could not be applied qua the petitioners.

Per contra, it is contended by learned Additional Advocate General that as a matter of fact the Government of Rajasthan granted two additional increments to the teachers working in higher education department and polytechnic colleges on acquiring the degree of Ph.D. while in service but by way of introducing an amendment in relevant pay rules the grant of such advance increments was withdrawn,

therefore, the sanction granted by Governor to the universities to allow its teachers two advance increments on acquiring Ph.D. degree was also revoked.

Heard counsel for the parties.

The petitioners were given two advance increments by the respondent university on receiving sanction for it by Governor of Rajasthan under a communication dated 11.6.2001. It is pertinent to note that such approval was granted on basis of recommendation made by the University Grants Commission and also by the Ministry of Human Resource Development, Government of India. At one point of time the University Grants Commission also decided to withdraw the grant of advance increments to the teachers who were appointed to a post for that degree of Ph.D. was not essential for recruitment. However, subsequently the University Grants Commission as well as the Indian Council of Agriculture Research made it clear that all the teachers who acquired the degree of Ph.D. prior to 1.1.1996 and during their service tenure shall be entitled for such advance increments.

By making an amendment in relevant pay rules under a notification dated 6.5.2002 issued under the orders of Governor, exercising powers under proviso to Article 309 of the Constitution of India, the provision for grant of advance increments was deleted

but no such decision is taken by Governor of Rajasthan for withdrawal of grant of such advance increments to the teachers working with universities as it is apparent from perusal of communication dated 15.5.2002 (Anx.5) and communication dated 9.5.2002 (Anx.7). Once a sanction was granted by Governor to allow advance increments to the teachers working in the universities on acquiring the degree of Ph.D. then the decision for withdrawal of that could have been taken by the Governor only. The decision of the State Government without the concurrence of Governor is of no consequence and on basis of that the respondents were having no authority to discontinue the advance increments granted to the teachers of the universities.

Beside that, it is pertinent to note that for the teachers working in Government Colleges and Polytechnic Colleges of Government of Rajasthan to whom also the advance increments were given on acquiring the degree of Ph.D. also suffered withdrawal of advance increments w.e.f. 6.5.2002. It is the position admitted that the Government of Rajasthan did not allow advance increments to the teachers after the date the amendment was introduced in the relevant pay rules but the teachers to whom it was granted earlier are still continuing with those increments and rightly so as to amendment made in the Rules is having prospective application. Meaning thereby that the

teachers who acquired the degree of Ph.D. after making an amendment under the the pay rules w.e.f. 6.5.2002 for withdrawal of grant of advance increment shall not be entitled for any increment on basis of acquisition of higher qualification but the teachers who have already acquired the degree of Ph.D. and also given the advance increments, shall be having no effect of the amendment introduced on 6.5.2002. The notifications placed on record by the respondents as Anx.6 and Anx.7 make it further clear that the provision for grant of advance increments on acquiring the degree of Ph.D. was withdrawn with immediate effect. Such withdrawal is having no application for the persons to whom such benefit has already been extended. Hence such withdrawal is having no application qua them.

Accordingly, these petitions for writ deserve acceptance and the same, therefore, are allowed. It is declared that the communications dated 24.7.2002, 6.5.2002, 9.5.2002 and 15.5.2002 are having no application qua the petitioners. The petitioners are declared entitled to receive two advance increments on acquiring the degree of Ph.D. during their service tenure as sanctioned by the Governor under the order dated 11.6.2001. If the respondents have withdrawn the advance increments given to the petitioners on acquiring the degree of Ph.D., then the same shall be restored and all arrears for non grant of such advance

increments be paid to the petitioners. If any recovery has been made from pay/pension of the petitioners as a consequence to withdrawal of advance increments then the same shall also be refunded to the petitioners with interest @ 6.5% per annum.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.